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A new independent anti-doping programme in the Netherlands

The Sunweb professional cycling team launched an internal anti-doping programme at the start of the latest cycling season. The entire programme will be run by the Dutch Doping Authority. Team Sunweb is therefore the first cycling team in the world which, alongside the standard control programme, will have its own athletes subjected to doping controls by an independent third party. This agreement between Sunweb and the Dutch Doping Authority has inevitably raised eyebrows. Criticisms have focused on the possible suggestion of a conflict of interest. What exactly is the thinking behind the programme? How should this programme be seen in the context of existing anti-doping efforts? And could the independence of the Doping Authority be at stake? Michiel van Dijk, Partner at CMS, in this article discusses these questions and the integrity concerns.

Holier than thou?

The alliance between Team Sunweb and the Dutch Doping Authority¹ was announced at the annual team presentation in Berlin on 4 January 2018. The Commercial Director of the title sponsor of the cycling team, Sunweb (a Swiss-based tour operator offering holidays online), announced that it will finance blood and urine testing for all of the team's programmes: the men's team, the women's team and the development team. The associated costs were not announced but the sponsor said they could amount to about €150,000 per season. Immediately after the announcement, there was the inevitable criticisms of the agreement and of the sponsor's decision to invest in the extra anti-doping programme. "Holier than thou" and "over the top" were the comments frequently heard in the world of cycling after the surprising announcement². "You don't expect the Mafia to pay the Untouchables?" said former cyclist and cycling journalist Danny Nelissen, who also described the agreement as fundamentally unethical and undesirable³. But is this criticism justified? And is the independence of the Doping Authority really at stake?

The specifics of the agreement

As pointed out above, the agreement provides for blood and urine testing

for all cyclists who have a contract with Team Sunweb. Herman Ram, the Director of the Doping Authority⁴, has stated that there will be an additional out-of-competition programme that will include, alongside blood and urine controls, the management of the athlete biological passport and the entire whereabouts system management. It was not announced how many additional controls there will be alongside the existing programme, which currently involves approximately 250 standard controls annually in Dutch professional cycling. Specific information would have reduced the impact of unannounced controls.

The Doping Authority has emphasised that the doping controls will be conducted completely independently. Team Sunweb is financing the doping controls via its sponsor but its role ends there. The controls will be conducted in exactly the same way as under existing arrangements. And, as with all other controls, data will be analysed by WADA-accredited laboratories and entered in WADA's control database. Any anomalies and/or infringements found will be processed in exactly the same way as all other anti-doping rule violations.

It should be pointed out that the factor of relevance in doping cases is that laboratory results must come from

WADA-accredited laboratories. Results from non-accredited laboratories have, by definition, less value as evidence than results based on sample collection by an anti-doping organisation accredited by WADA (such as the Doping Authority in this case) and analysis by a WADA-accredited laboratory.

Financing

As stated above, the Team Sunweb sponsor will be paying only for the implementation of the anti-doping programme. The Team Sunweb cyclists may therefore undergo controls as part of the standard anti-doping programme but also in the context of the new arrangement with the Doping Authority. However, Team Sunweb does not make any decisions about the timing of controls, the location of the controls or the selection of cyclists.

Doping controls in the Netherlands are conducted by the Doping Authority and largely financed by the world of sports itself. The Dutch Government⁵ provides more than half of the financing for the Doping Authority, and in particular for the infrastructure and a number of anti-doping programmes for education and prevention. Controls, on the other hand, are effectively financed from the proceeds of the Dutch National Lottery (de Lotto), with these funds

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being managed and distributed by the Dutch National Olympic Committee, NOC*NSF. Extra controls or target controls are usually paid for by the event organisers or specific sports associations. If, for example, there are controls at cycling world championships organised in the Netherlands, they are financed by the local organiser and the UCI. As stated, standard controls are financed from lottery funding which is managed and distributed by NOC*NSF.

Additional controls such as those requested by the Royal Dutch Football Association are financed by the relevant association itself. It must be pointed out that, across the entire range of sports, sports organisers or those immediately concerned pay for controls. The fact that Team Sunweb is now going to finance additional controls (through its sponsor) does not represent a new development since there is no difference with existing practice in the Netherlands.

The new agreement in the context of other anti-doping programmes

Team Sunweb is a World Tour team and it has a World Tour licence issued by the UCI. The UCI is one of the stakeholders in the Cycling Anti-Doping Foundation ('CADF'). CADF is a non-profit foundation under Swiss law that is completely independent of the UCI, which manages the anti-doping programme of, and on behalf of, the UCI entirely autonomously. CADF is entirely funded by stakeholders such as the professional cycling teams, the UCI, event organisers and the cyclists themselves. All teams are required to transfer a substantial annual sum to the UCI and CADF to finance the anti-doping programme. Team Sunweb will continue to meet its commitments in this respect and, through its sponsor, also finance the new arrangement with the Doping Authority.

It is widely known, and this has been confirmed by WADA, that cycling has one of the best systems of anti-doping prevention and control in comparison to other global sports. The alliance between Team Sunweb and the Doping Authority complements the present programme and does not affect it in any way. As mentioned before, the Team Sunweb riders will be tested more often than

their colleagues in other teams. Team Sunweb is anticipating an international development in professional cycling that is already in place. The professional teams in the AIGCP⁶ had already drawn up a plan and submitted it to the CADF for the further development and refinement of the present anti-doping programme. The question is whether the agreement between Team Sunweb and the Doping Authority will interfere with this plan and what the consequences will be now that Team Sunweb is moving ahead without waiting for the other teams. A striking detail here is that the Director of Team Sunweb is also the chairman of the AIGCP.

The UCI has stated its approval of the agreement between Team Sunweb and the Doping Authority. The UCI has stated that "any additional initiative, if implemented within the framework of the international anti-doping code and the anti-doping rules of the UCI, is a step forward in maintaining the credibility of our sport."

Lance Armstrong

It is known that Lance Armstrong gave money to the UCI for doping controls. We all know how that turned out. The question is whether a parallel can be drawn between Armstrong's donations to the UCI and the payments made by Team Sunweb's sponsor to the Doping Authority. The Director of the Doping Authority is not fazed by possible comparisons or concerned that the Doping Authority could be used by teams or athletes to clean up their image.

The reverse side of the coin is that the Doping Authority can never provide a 100% guarantee that a team is entirely 'clean.' The Doping Authority emphasises that, if a Team Sunweb rider is found to have committed a doping violation, the case will be dealt with just like other violations. This does not detract in any way from the credibility of the Doping Authority⁷. It is also reasonable to point out that the suggestion that there may be a negative effect on the Doping Authority's image is highly debatable against the background of a trend in which sponsors require sports to be clean and in which they are willing to contribute financially to that goal.

From an ethical point of view, the unanswered question remains the extent to which the Doping Authority may be surrendering to the lure of commercial funding. Public financing may be thought to be preferable and an individual agreement such as the one between Sunweb and the Doping Authority could create the appearance of a conflict of interest⁸.

Conclusion

Given the fact that the organisation of the programme resides entirely with the Doping Authority, and that Team Sunweb and/or its sponsor cannot exert any influence, independence is safeguarded. But this is not enough. Any appearance of bias or conflict of interest needs to be explicitly excluded. An anti-doping policy means zero tolerance, and that must also apply to impartiality and conflicts of interest. The question is whether the funding of additional controls by government provides better safeguards for independence. Given developments in Russia, that is highly debatable.

The Russian doping scandal has shown that government interference and manipulation are also possible. The new agreement is another good step towards the elimination of doping from international cycling, particularly if this example is widely followed alongside the existing global anti-doping programme. In this respect, the hope is that Team Sunweb's initiative does not interfere with the existing plan already being developed jointly by the teams. Time will tell.

1. The Doping Authority is the independent anti-doping organisation in the Netherlands. Its official name is: Stichting Anti-Doping Autoriteit Nederland, hereinafter 'the Doping Authority.'
2. See: NOS <https://NOS.nl/artikel/2210822>
3. See: NOS <https://NOS.nl/artikel/2210532>
4. Sport & Strategie Online <http://www.sportenstrategie.nl/2018/topsport>
5. In other words: the Ministry of Health, Welfare and Sport (VWS).
6. Association International des Groupes Cyclistes Professionnels.
7. L. Aquina, 'Onafhankelijkheid van de Dopingautoriteit niet in het geding', Sport Knowhow XL (dd. 25 January 2018).
8. According to Jan Vorstenbosch, a specialist in ethical values in sports in <https://NOS.nl/artikel/2210532>